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SERVICE DATE – OCTOBER 26, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 659X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–IN ALLEGANY
COUNTY, MD

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

Decided: October 25, 2005

CSX Transportation, Inc. (CSXT), filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon an 8.54-mile line of railroad on its Southern Region, Huntington Division East, Georges Creek Subdivision, between milepost BAI 27.0 near Morrison and milepost BAI 18.46 at the end of the track near Carlos, in Allegany County, MD. Notice of the exemption was served and published in the Federal Register on August 25, 2005 (70 FR 49974). The exemption was scheduled to become effective on September 24, 2005, unless stayed by the Board or a formal expression of intent to file an offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c)(2) was filed by September 2, 2005.

On September 8, 2005, counsel for WMS, LLC (WMS), late-filed a formal expression of intent for WMS to file an OFA to purchase the entire line and requested that the time period for WMS to submit its OFA be tolled for 30 days. By decision served on September 23, 2005, WMS's late-filed notice of intent to file an OFA was accepted,¹ the time period for WMS to file an OFA was tolled until October 21, 2005, and the effective date of the exemption was further postponed until October 31, 2005.

On October 21, 2005, WMS timely filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27(c) to purchase the entire line for \$360,610.²

An OFA to acquire a line for continued rail service need not be detailed, but an offeror must show that it is financially responsible and that the offer is reasonable. See Conrail

¹ This filing had the effect of automatically staying the effective date of the exemption for 10 days, until October 4, 2005. See 49 CFR 1152.27(c)(2)(i).

² WMS also has filed a motion for protective order under 49 CFR 1104.14 to file under seal certain confidential documents and information in connection with its OFA. The confidential documents include information relating to the identity of an investor who wishes to remain anonymous for the purpose of the public docket. The protective order is being issued in a separate decision in this proceeding. Consistent with the terms of the protective order, WMS filed a public version of the OFA. The confidential version will be kept under seal.

Abandonments Under NERSA, 365 I.C.C. 472 (1981). WMS has submitted financial information, showing that it has the financial resources to acquire and operate the line. WMS is thus found to be financially responsible.

WMS's offer is less than CSXT's estimated valuation of \$691,000. Although the parties agree on the net salvage value of the line (\$360,610), they disagree on the value of the real estate. As the basis for its land valuation, WMS cites an analysis prepared by Randall D. Gustafson, a railroad appraiser. According to Mr. Gustafson, CSXT's real estate value is flawed in several respects. First, Mr. Gustafson notes that, although CSXT's original land value assumed that CSXT owned all of the 66 acres of right-of-way in fee, CSXT's counsel states that CSXT owns 44 acres in fee and only a reversionary interest in the remaining parcels. Second, according to Mr. Gustafson, CSXT failed to adjust the right-of-way value for the cost and timing of sale. Finally, Mr. Gustafson states that CSXT failed to account for rebuilding costs for a portion of the line that was damaged by a washout and that would be necessary for the removal of salvaged materials. After making the adjustments he finds appropriate, Mr. Gustafson reduces the land value to \$0. Consistent with 49 U.S.C. 10904(c), and 49 CFR 1152.27(c)(1)(ii)(C), WMS has explained the basis for the disparity between its offer and the carrier's estimate of the purchase price or acquisition price.

Because WMS is financially responsible and has offered financial assistance, the effective date of the exemption authorizing the abandonment will be postponed.

Any person filing a request to set terms and conditions must pay the requisite filing fee, set forth at 49 CFR 1002.2(f)(26), which currently is \$18,400. An original and 10 copies of the request should be submitted along with the fee, in an envelope bearing the docket number of this proceeding, along with the words "Attention: Office of Proceedings, Request to Set Terms and Conditions" in the lower left hand corner.

Appeals to this decision are governed by 49 CFR 1011.2(a)(7). Any appeal must be filed within 10 days of the service date of this decision and will be heard by the entire Board.

This action will not significantly affect the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The effective date of the decision authorizing the abandonment is postponed to permit the OFA process under 49 U.S.C. 10904 and 49 CFR 1152.27 to proceed.

2. If WMS and CSXT cannot agree on the purchase price, either party may request the Board to establish the terms and conditions of the purchase on or before November 21, 2005. If no agreement is reached and no request is submitted by that date, the Board will serve a decision

vacating this decision and allowing the abandonment exemption to become effective, subject to possible imposition of conditions.

3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary